

Attorney Docket No.: **IFF-0017**
Inventors: **Boden and Stumpf**
Serial No.: **10/738,323**
Filing Date: **December 16, 2003**
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REMARKS

Claims 1-7 are pending in the instant application. Claims 1-7 have been rejected. Claim 1 has been amended. No new matter has been added by this amendment. Reconsideration is respectfully requested in light of the following remarks.

I. Rejection of Claims Under 35 U.S.C. §102

Claims 1-5 have been rejected under 35 U.S.C. §102 as being anticipated by Orson, Sr. (U.S. Patent No. 5,081,104). It is suggested that this reference teaches a dispensing device comprising all the featured elements of the instant invention. Applicants respectfully disagree with this rejection. Orson, Sr. teaches the use of 5-methyl-3-methoxy butanol (MMB) as a fragrance solubilizer to improve solubility and evaporation rates of volatile fragrances up to 30%. In contrast, the instant application teaches at page 5, lines 23-28, that an active gel contains an oil or fragrance present at about 90 to 99.8% by weight. To clarify the elements of the instant invention, Applicants have amended claim 1 to recite the high levels of oil or fragrance present in the active gel. Because Orson, Sr. fails to teach each and every element as set forth in the claims as amended, this reference does not anticipate the instant invention. MPEP 2131. It is therefore respectfully requested that this rejection be withdrawn.

Claims 1, 3-5 and 7 have been rejected under 35 U.S.C. §102 as being anticipated by Wefler et al. (U.S. Patent No. 5,903,710). It is suggested that Wefler et al. discloses a dispensing device comprising all the featured elements of the instant invention.

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Applicants respectfully disagree with this rejection. Wefler et al. teach a device for dispensing a liquid or gel. However, Wefler et al. fails to teach an active gel comprising an oil or fragrance present in the active gel at about 90 to 99.8 percent by weight. Accordingly, Wefler et al. fails to teach each and every element as set forth in the instant claims. MPEP 2131. It is therefore respectfully requested that this rejection be withdrawn.

II. Rejection of Claims Under 35 U.S.C. §103

Claims 6 and 7 have been rejected under 35 U.S.C. §103 as being unpatentable over Orson, Sr. It is suggested that while Orson, Sr. does not teach the specific mixture of fragrance and thickener and the gel being an insect repellant, that this reference discloses all the featured elements of the instant invention. The Examiner suggests that it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the mixture claimed, since the percentage of thickener to fragrance would be a matter of design choice depending on the type of thickener used and the desired capillary action desired. Applicants respectfully traverse this rejection.

As indicated *supra*, Orson, Sr. teaches the use of MMB (40% to 90%, see claim 5) as a fragrance solubilizer to improve solubility and evaporation rates of volatile fragrances present at a concentration of up to 30%. This reference teaches that for a wide range of fragrances, amounts of fragrance to solubilizer for generating clear and homogeneous aqueous solutions are 5%:45%, 15%:60% and 20%:65% (column 4, line 46 to column 5, line 5). From the general teachings of this reference, it appears that the higher

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the concentration of fragrance, the greater the amount of solubilizer required to achieve a homogenous and clear aqueous solution. Accordingly, modifying the fragrance dispensing composition of Orson, Sr. by employing a fragrance at 95.97% and thickener at about 4.0% would render the invention of Orson, Sr. unsatisfactory for its intended purpose of achieving a homogenous and clear aqueous solution of fragrance using high concentrations of MMB because MMB could only be used at a concentration of 0.03%.

MPEP 2143.01 indicates that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). Further, if proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. In re Gordon, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).

Because modifying Orson, Sr. to employ high concentrations of fragrance or oil, i.e., 90 to 99.8% (claim 1) or more specifically 95.97% (claim 6), would render the invention of Orson, Sr. unsatisfactory for its intended purpose, this reference fails to make the instant invention obvious in accord with the requirement set forth in MPEP 2142. In so far as claim 7 is dependent on claim 1, this claim is not obvious in view of Orson, Sr. for the reasons stated above. When an independent claim is nonobvious under 35 U.S.C. §103, then any claim depending therefrom is nonobvious. In

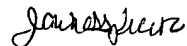
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re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). See MPEP §2143.03. Withdrawal of the rejection of claims 6 and 7 is therefore respectfully requested.

III. Conclusion

Applicants believe that the foregoing comprises a full and complete response to the Office Action of record. Accordingly, favorable reconsideration and subsequent allowance of the pending claims is earnestly solicited.

Respectfully submitted,



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Date: **August 4, 2005**

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